

Department of Justice

§ 15.3

if the action is brought against the estate or successor of such program participant) shall promptly deliver all process and pleadings served upon such program participant, or an attested true copy thereof, to the Branch Director, Torts Branch, Civil Division, U.S. Department of Justice, Washington, DC 20530, and to the Department Claims Officer, Office of the General Counsel, Department of Health, Education and Welfare, Washington, DC 20201. The Branch Director shall promptly furnish copies of the papers to the U.S. Attorney for the district embracing the place wherein the action or proceeding is brought.

(c) Any person against whom an action for injury, loss of property, personal injury, or death has been brought due to exposure to radiation based on acts or omissions by a contractor, as defined in section 1631(d) of the Department of Defense Authorization Act of 1985, in carrying out an atomic weapons testing program under a contract with the United States, shall promptly deliver all process and pleadings served upon such person, or an attested true copy thereof, to the Branch Director, Torts Branch, Civil Division, U.S. Department of Justice, Washington, DC 20530.

[42 FR 15409, Mar. 22, 1977; 42 FR 17111, Mar. 31, 1977, as amended at 46 FR 52355, Oct. 27, 1981; Order No. 1074-84, 49 FR 44995, Nov. 14, 1984]

§ 15.2 Providing data bearing upon scope of employment or program participant status.

(a) The employee's employing Federal agency shall submit a report containing all data bearing upon the question whether the employee was acting within the scope of his office or employment with the Federal Government, at the time of the incident out of which the suit arose, to the United States Attorney for the district embracing the place wherein the civil action or proceeding is brought, with a copy of the report to the Branch Director of the Torts Branch, Civil Division, Department of Justice, at the earliest possible date, or within such time as shall be fixed by the U.S. Attorney upon request.

(b) A program participant as that term is defined in 42 U.S.C. 247b(k)(2)(B) shall deliver all information in the participant's possession or reasonably available to the participant concerning the participant's status as a program participant to the Branch Director, Torts Branch, Civil Division, U.S. Department of Justice, Washington, DC 20530, upon request and within such time as shall be fixed.

(c) A person against whom an action has been brought for injury, loss of property, personal injury, or death due to exposure to radiation based on acts or omissions by a contractor, as defined in section 1631(d) of the Department of Defense Authorization Act of 1985, in carrying out an atomic weapons testing program under a contract with the United States, shall deliver all information in the person's possession or reasonably available to the person concerning (1) the person's status as a contractor within the meaning of section 1631(d) of the Department of Defense Authorization Act of 1985; (2) the relation, if any, of the civil action or injury, loss of property, personal injury, or death due to exposure to radiation to acts or omissions by a contractor in carrying out an atomic weapons testing program under a contract with the United States; and (3) the subject matter of the action to the Branch Director, Torts Branch, Civil Division, U.S. Department of Justice, Washington, DC 20530, upon request within such time as shall be fixed and shall cooperate with the Justice Department in defense of said action upon request following certification of an action pursuant to section 1631(b) of the Department of Defense Authorization Act of 1985.

[Order No. 254-61, 26 FR 11420, Dec. 2, 1961, as amended at 42 FR 15410, Mar. 22, 1977; Order No. 960-81, 46 FR 52355, Oct. 27, 1981; Order No. 1074-84, 49 FR 44995, Nov. 14, 1984]

§ 15.3 Removal and defense of suits.

(a) The U.S. Attorneys are authorized to make the certifications provided for in 10 U.S.C. 1089(c), 22 U.S.C. 817(c), 28 U.S.C. 2679(d), 38 U.S.C. 4116(c), and 42 U.S.C. 233(c) and 2458a(c) with respect to civil actions or proceedings brought against Federal employees in their respective districts. Such a certification

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may be withdrawn if a further evaluation of the relevant facts or the consideration of new or additional evidence calls for such action. The making, withholding, or withdrawing of certifications, and the removal and defense of, or the refusal to remove and defend, such civil actions or proceedings by the U.S. Attorneys shall be subject to the instructions and supervision of the Assistant Attorney General in charge of the Civil Division.

(b) The Assistant Attorney General in charge of the Civil Division is authorized:

(1) To make the certification provided for in 42 U.S.C. 247b(k)(5) with respect to civil actions or proceedings brought against program participants in various courts of law;

(2) To withdraw that certification if further evaluation of the relevant facts or the consideration of new or additional evidence calls for such action;

(3) To move to revoke such certification pursuant to 42 U.S.C. 247b(k)(6) should the facts warrant; and

(4) To redelegate to subordinate division officials the authority delegated by this paragraph, provided that such redelegation shall be in writing and shall be approved by the Associate Attorney General before becoming effective.

(c) The Assistant Attorney General in charge of the Civil Division is authorized:

(1) To make the certification provided for in section 1631(b) of the Department of Defense Authorization Act of 1985, with respect to civil actions or proceedings brought against persons for injury, loss of property, personal injury or death due to exposure to radiation based on acts or omissions by a contractor, as defined in section 1631(d) of the Department of Defense Authorization Act of 1985, in carrying out an atomic weapons testing program under a contract with the United States in any court or other tribunal;

(2) To withdraw that certification if further evaluation of the relevant facts or the consideration of new or additional information calls for such action, in the exercise of his sole discretion; and

(3) To redelegate to subordinate Division officials the authority delegated

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by this paragraph, provided that such redelegation shall be in writing and shall be approved by me before becoming effective.

[42 FR 15410, Mar. 22, 1977, as amended by Order No. 1074-84, 49 FR 44995, Nov. 14, 1984]

APPENDIX TO PART 15

CIVIL DIVISION

[Directive No. 90-77]

EDITORIAL NOTE: At 44 FR 9379, Feb. 13, 1979, Civil Division, Directive No. 90-77 was revoked.

DELEGATION OF AUTHORITY OF THE ASSISTANT ATTORNEY GENERAL OF THE CIVIL DIVISION TO MAKE CERTIFICATIONS, TO WITHDRAW CERTIFICATIONS, AND TO FILE APPROPRIATE MOTIONS

CIVIL DIVISION

[Directive No. 90-79]

1. By virtue of the authority vested in me by part 15 of title 28 of the Code of Federal Regulations, particularly §15.3(b), it is hereby ordered as follows:

2. The authority delegated to the Assistant Attorney General in charge of the Civil Division to make the certifications provided for in 10 U.S.C. 1089(c), 22 U.S.C. 817(c), 28 U.S.C. 2679(d), 38 U.S.C. 4116(c), and 42 U.S.C. 233(c) and 2458a(c) with respect to civil actions or proceedings brought against Federal employees and to certify the status of program participants under the National Swine Flu Immunization Program of 1976, as that term is defined in 42 U.S.C. 247b(k)(2)(B), and as required under 42 U.S.C. 247b(k)(4)-(5), is hereby delegated to any Deputy Assistant Attorney General of the Civil Division and to any Director of the Torts Branch, any one of whom may individually exercise the authority in any given instance. This delegation also includes the authority to withdraw the certification and file appropriate motions as set forth in §15.3(b) of title 28 of the Code of Federal Regulations.

3. Civil Division Directive No. 90-77 is hereby revoked.

[44 FR 9379, Feb. 13, 1979]

PART 16—PRODUCTION OR DISCLOSURE OF MATERIAL OR INFORMATION

Subpart A—Procedures for Disclosure of Records Under the Freedom of Information Act

Sec.
16.1 General provisions.